

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2260 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?
- No. 1 - Yes Nos. 2 to 5 - No

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DHIRAJBHAI MOHANBHAI GOHIL

Versus

STATE OF GUJARAT

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Appearance:

MR G.M. JOSHI FOR MR. YN OZA for Petitioners  
MR. PRASHANT G. DESAI GOVERNMENT PLEADER for  
respondent Nos. 1 & 2  
MR PB MAJMUDAR for Respondent Nos. 3 to 7  
MR HARIN P RAVAL for Respondent No. 8

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 14/07/97

ORAL JUDGEMENT

The petitioners who were elected body of Tavra Gram Panchayat have filed this petition for restraining the respondents from exercising any powers for removal, dissolution or supersession of the petitioners on the basis that the erstwhile Tavra Gram Panchayat was divided

into two by the notification dated 5.8.1992. Virtually the petitioners are challenging the notification dated 5.8.1992 which purports to divide two gram panchayats. The said notification was subject matter of a challenge in Special Civil Application No. 5920 of 1992 which came to be decided by Hon'ble Mr. Justice S.K. Keshote on 28.2.1997 when the petition was dismissed as infructuous by holding that under the notification dated 5.8.1992 two gram panchayats in place of one were constituted and that the petitioner was going to complete his tenure as sarpanch which was to be in March 1997.

It was contended on behalf of the petitioners that the notification dated 5.8.1992 was issued under Section 9(2) of the Act of 1961 and all that what was done under the notification was exclusion of Nava Tavra and that area there was no question of division of the old village Tavra. It was submitted that by merely excluding one of the two local areas from the village Tavra the identity of the earlier village cannot be said to have been lost. On this basis it was submitted that even if the notification dated 5.8.1992 is deemed to be operative under the new Act in view of the corresponding provisions contained in the new Act of 1992 read with the provisions of Section 276(2)(j) the provisions of Section 254 of the new Act can alone be attracted and not the provisions of Section 263.

On a bare reading of the notification dated 5.8.1992 it is clear that by this notification issued under Section 9(2) of the Act of 1961 that the earlier gram namely Tavra was divided into two grams namely Tavra consisting of Tavra Revenue village and Nava Tavra consisting of Tavra hamlet. It is specifically stated in the notification that after the division of the area the new grams formed shall be known as grams named in the column 7 having local areas as shown in column 8 of the Schedule. It is thus abundantly clear that by this notification two separate new grams came into existence. Therefore, this is not a case where the provisions of Section 254 can be invoked on behalf of the petitioners. This is a clear case falling within the ambit of the provisions of Section 263 of the Act which corresponds to Section 310 of the Act of 1961. Under section 310 of the Act of 1961 it was inter alia provided that where by virtue of notification under Section 9(2) the local area comprised in the gram is split up into two or more grams, the gram panchayat constituted in respect of such local area shall stand dissolved and all the members of the panchayat shall vacate office. Similar provision is contained in the corresponding new provisions of Section

263 of the Act of 1993 which provides that where the village is split into two or more villages then, with effect from the date on which the village is split up, the panchayat constituted in respect of such local area shall stand dissolved and all the members of the panchayat shall vacate office. The notification earlier issued continued to operate in view of provisions of Section 276(2)(j) of the Act, 1993 and since it is a notification splitting the earlier gram into two new grams the consequences statutorily prescribed by Section 263 must ensue and the petitioners cannot stall the operation of that notification any further. This petition is therefore rejected. Notice is discharged with no order as to costs. Ad-interim relief stands vacated.